



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MAC/167754

PRELIMINARY RECITALS

Pursuant to a petition filed August 5, 2015, under Wis. Stat. § 49.497(1m)(a), to review a decision by the Portage County Department of Human Services in regard to Medical Assistance (MA)/BadgerCare Plus, a hearing was held on October 28, 2015, at Stevens Point, Wisconsin. A hearing set for September 22, 2015, was rescheduled at the petitioner's request.

The issue for determination is whether the Department has incorrectly determined that the petitioner is not paying on an overpayment liability.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

||

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], Supervisor
Portage County Department of Human Services
817 Whiting Avenue
Stevens Point, WI 54481-5292

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Portage County.
2. The petitioner received BadgerCare Plus (BCP) benefits from at least May 1, 2011, through May 31, 2013. He and his BCP casehead failed to correctly report the amount of their income to the

agency during this period, and a \$17,710.15 overpayment for the period resulted. A BCP overpayment notice was issued to the petitioner on March 11, 2015, and was followed by a repayment agreement (March 12, 2015) and dunning letters (April 2, May 4, June 2, 2015). The petitioner did not respond to these documents.

3. The Department issued an *Order to Compel Payment of Liability* to the petitioner on July 9, 2015. See, Exhibit 4.
4. The petitioner has made no payments towards the \$17,710.15 overpayment.

DISCUSSION

Following issuance of an MA/BCP overpayment notice, a person who then fails to enter into or adhere to a repayment agreement may be subject to an order to compel payment of that liability:

49.497(1m)(a) (a) If, after notice that an incorrect payment was made, a recipient, or parent of a minor recipient, who is liable for repayment of an incorrect payment fails to repay the incorrect payment or enter into, or comply with, an agreement for repayment, the department may bring an action to enforce the liability or may issue an order to compel payment of the liability. Any person aggrieved by an order issued by the department under this paragraph may appeal the order as a contested case under [ch. 227](#) by filing with the department a request for a hearing within 30 days after the date of the order. *The only issue at the hearing shall be the determination by the department that the person has not repaid the incorrect payment or entered into, or complied with, an agreement for repayment.*

(emphasis added)

Wis. Stat. §49.497(1m)(a).

The petitioner does not contest the *amount* of the initial or current overpayment liability, or that he has not entered into a repayment agreement. The petitioner's partner asserted that any overpayment was caused by innocent confusion and a verification error by the petitioner's employer. It is too late to successfully advance that argument. Because there is no factual dispute that the petitioner has not repaid the overpayment, and has not entered into a repayment agreement by the time of hearing, there is no issue for this administrative law judge to decide herein.

CONCLUSIONS OF LAW

Because there is no factual dispute that the petitioner has not repaid the overpayment, and has not entered into a repayment agreement by the time of hearing, there is no issue for this administrative law judge to decide herein.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 29th day of October, 2015

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 29, 2015.

Portage County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability